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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
Oakland Division

14 UNITED STATES OF AMERICA,)

15)
16 Plaintiff,)

17)
18 v.)

19 INDUSTRIOUS KID, INC.,)
a corporation,)

20)
21 JEANETTE SYMONS,)

22 individually and as an officer)

23 of the corporation, and)

24 Defendants.)

CV No. 08-0639

CONSENT DECREE AND ORDER FOR
CIVIL PENALTIES, INJUNCTION, AND
OTHER RELIEF

25
26 WHEREAS the plaintiff, the United States of America, has commenced this action by

1 filing the complaint herein; the defendants have waived service of the summons and complaint;
 2 the parties have been represented by the attorneys whose names appear hereafter; and the parties
 3 have agreed to settlement of this action upon the following terms and conditions, without
 4 adjudication of any issue of fact or law and without the defendants admitting liability for any of
 5 the matters alleged in the complaint or that the facts as alleged in the complaint, other than the
 6 jurisdictional facts, are true;

7 THEREFORE, on the joint motion of the plaintiff and the defendants, it is hereby
 8 ORDERED, ADJUDGED, and DECREED as follows:

9 1. This Court has jurisdiction of the subject matter and of the parties.
 10 2. The complaint states a claim upon which relief may be granted against the
 11 defendants under Sections 1303(c) and 1306(d) of the Children's Online Privacy Protection Act
 12 of 1998 ("COPPA"), 15 U.S.C. §§ 6501-6506, 6502(c), and 6505(d), and Sections 5(a)(1),
 13 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.
 14 §§ 41-58, 45(a)(1), 45(m)(1)(A), 53(b), 56(a), and 57b. Among other things, the complaint
 15 alleges that the defendants violated COPPA by failing to provide sufficient notice to parents of
 16 their information practices either in their online or direct notices to parents and to obtain
 17 verifiable parental consent prior to collecting, using, or disclosing personal information from
 18 children online.

19 3. Entry of this Consent Decree and Order for Civil Penalties, Injunction, and Other
 20 Relief is in the public interest.

21 DEFINITIONS

22 4. For purposes of this Consent Decree, the term "Rule" means the Federal Trade
 23 Commission's Children's Online Privacy Protection Rule, 16 C.F.R. Part 312.

24 5. For purposes of this Consent Decree, the terms "child," "collects," "collection,"
 25 "Commission," "delete," "disclosure," "Internet," "online contact information," "operator,"
 26 "parent," "person," "personal information," "third party," "verifiable consent," and "website or

1 online service directed to children,” are defined as those terms are defined in Section 312.2 of
2 the Rule, 16 C.F.R. § 312.2.

3 6. For purposes of this Consent Decree, the term “blog” means a web-based
4 publication focusing on a particular subject or functioning as an online journal and typically
5 consisting of periodic entries containing text, images, and links to other web pages.

6 7. For purposes of this Complaint, a “blog hosting service” means a website or
7 online service that hosts blogs and often provides the software to use as a template for creating
8 blogs.

9 8. For purposes of this Consent Decree, “defendants” means Industrious Kid, Inc., a
10 corporation, and Jeanette Symons, individually and as an officer of the corporation.

11 INJUNCTION

12 9. The defendants, their successors and assigns, and their officers, agents, servants,
13 representatives, and employees, and all persons in active concert or participation with them who
14 receive actual notice of this Consent Decree by personal service or otherwise, are hereby
15 enjoined, directly or through any corporation, subsidiary, division, website, or other device,
16 from:

- 17
- 18 a. Failing to provide sufficient notice on any website or other online service
19 directed to children, or through which they, with actual knowledge,
20 collect, use, and/or disclose personal information from children, of what
21 information defendants collect online from children, how they use such
22 information, their disclosure practices, and all other required content, in
23 violation of Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b);
- 24 b. Failing to include in their direct notice to parents sufficient notice of what
25 information defendants collect online from children, how they use such
26 information, their disclosure practices, and all other required content, in
violation of Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c);

c. Failing to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, in violation of Section 312.5 of the Rule, 16 C.F.R. § 312.5(a)(1); or,

d. Violating any other provision of the Children's Online Privacy Protection Rule, 16 C.F.R. Part 312, and as the Rule may hereafter be amended. A copy of the Rule is attached hereto as "Appendix A" and incorporated herein as if fully set forth verbatim.

CONSUMER EDUCATION REMEDIES

10. For a period of five (5) years from the date of entry of this Consent Decree, the defendants, and their successors and assigns, in connection with the operation of any website or other online service directed to children or through which it, with actual knowledge, collects, uses, and/or discloses personal information from children, shall place a clear and conspicuous notice (1) within the privacy policy required to be posted on its website(s) by Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b); (2) within the direct notice required to be sent to parents by Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c); and (3) at each location on its website(s) where personal information is collected, which states as follows in bold typeface:

NOTICE: Visit www.ftc.gov/privacy for information from the Federal Trade Commission about protecting children's privacy online.

Where the above notice is posted on a website or delivered via email or other electronic service, it shall be in the form of a hyperlink to www.ftc.gov/privacy. The Federal Trade Commission may change the hyperlink/URL upon thirty (30) days prior written notice to the defendants, their successors or assigns.

11. For a period of five (5) years from the date of entry of this Consent Decree, the defendants, and their successors and assigns, in connection with the operation of any blog or blog hosting service, shall place a clear and conspicuous notice on the homepage(s) and privacy notice(s) of their website(s), which states, in the form of a hyperlink in bold typeface, as follows:

1 Visit www.OnGuardOnline.gov for social networking safety tips for parents and
 2 youth, <http://onguardonline.gov/socialnetworking> ["parents" must contain a
 3 hyperlink to www.onguardonline.gov/socialnetworking.html, and "youth" must
 4 contain a hyperlink to www.onguardonline.gov/socialnetworking_youth.html]

5 The Federal Trade Commission may change the hyperlinks/URLs upon thirty (30) days prior
 6 written notice to the defendants, their successors or assigns.

7 **CIVIL PENALTY**

8 12. The defendants, and their successors and assigns, jointly and severally shall pay
 9 to the plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. §
 10 45(m)(1)(A), in the amount of One Hundred Thirty Thousand Dollars (\$130,000) due and
 11 payable within five (5) days following entry of this Consent Decree. Unless otherwise directed,
 12 payment shall be made by electronic fund transfer in accordance with procedures specified by
 13 the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, DC
 14 20530.

15 13. In the event of any default payment, which default continues for ten (10) days
 16 beyond the due date of payment, the entire unpaid penalty, together with interest, as computed
 17 pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment, shall immediately
 18 become due and payable.

19 **DELETION OF CHILDREN'S PERSONAL INFORMATION**

20 14. The defendants, and their successors and assigns, within five (5) days from the
 21 date of entry of this Consent Decree, shall delete all personal information collected and
 22 maintained in violation of the Rule through the date of entry of this Consent Decree.

23 **DISTRIBUTION OF ORDER AND COMPLIANCE GUIDE BY THE DEFENDANTS**

24 15. The defendants, and their successors and assigns, within thirty (30) days from the
 25 date of entry of this Consent Decree, shall provide a copy of this Consent Decree and the Federal
 26 Trade Commission compliance guide entitled *How to Comply with the Children's Online*

1 *Privacy Protection Rule* (Nov. 1999) (“compliance guide”) (attached hereto as “Appendix B”) to
 2 each of its current principals, officers, directors, and managers; and to all current employees and
 3 agents having responsibilities related to the operation of any website or online service subject to
 4 this Consent Decree; and to all current representatives having responsibilities related to
 5 compliance with this Consent Decree; and secure from each such person a signed statement
 6 acknowledging receipt of a copy of this Consent Decree and the compliance guide. The
 7 defendants shall, within ten (10) days of complying with this paragraph, submit to the
 8 Commission a signed statement setting forth the fact and manner of the defendants’ compliance,
 9 including the name and title of each person to whom a copy of the Consent Decree and
 10 compliance guide has been provided.

11 16. The defendants, and their successors and assigns, for a period of three (3) years
 12 from the date of entry of this Consent Decree, shall provide a copy of this Consent Decree and
 13 the compliance guide to each of its future principals, officers, directors, and managers; and to all
 14 future employees, agents, and representatives having responsibilities related to the operation of
 15 any website or online service subject to this Consent Decree, and secure from each such person a
 16 signed and dated statement acknowledging receipt of a copy of this Consent Decree and the
 17 compliance guide, within thirty (30) days after the person assumes such position or
 18 responsibilities. The defendants shall maintain copies of the signed statements, as well as other
 19 information regarding the fact and manner of their compliance, including the name and title of
 20 each person to whom a copy of the Consent Decree and compliance guide has been provided
 21 and, upon request, shall make the statements and other information available to the Commission.

22 **COMPLIANCE REPORTING BY THE DEFENDANTS**

23 17. In order that compliance with the provisions of this Consent Decree may be
 24 monitored:

- 25 a. For a period of three (3) years from the date of entry of this Consent
 26 Decree,

- 1 i. Individual defendant Symons shall notify the Commission of the
2 following:
- 3 (1) Any changes in her residence addresses, mailing addresses, and
4 telephone numbers, within thirty (30) days of the date of such
5 change;
- 6 (2) Any changes in her employment status (including self-
7 employment), and any change in her ownership in any business
8 entity that may affect compliance obligations arising under this
9 Consent Decree, within thirty (30) days of the date of such change.
10 Such notice shall include the name and address of each business
11 that the defendant is affiliated with, employed by, creates, forms,
12 or performs services for; a statement of the nature of the business;
13 and a statement of her duties and responsibilities in connection
14 with the business or employment; and
- 15 (3) Any changes in the defendant's name; and
- 16 ii. Each defendant shall notify the Commission of any changes in
17 corporate structure of the corporate defendant, or any business
18 entity that defendant Symons directly or indirectly controls or has
19 an ownership interest in, that may affect compliance obligations
20 arising under this Consent Decree, including but not limited to a
21 dissolution, assignment, sale, merger, or other action that would
22 result in the emergence of a successor entity; the creation or
23 dissolution of a subsidiary, parent, or affiliate that engages in any
24 acts or practices subject to this Consent Decree; the filing of a
25 bankruptcy petition; or a change in the corporate name or address,
26 at least thirty (30) days prior to such change, *provided* that, with

1 respect to any proposed change in the corporation about which a
2 defendant learns less than thirty (30) days prior to the date such
3 action is to take place, such defendant shall notify the Commission
4 as soon as is practicable after obtaining such knowledge.

5 b. Sixty (60) days after the date of entry of this Consent Decree and at such
6 times as the Federal Trade Commission shall reasonably require, the
7 defendants each shall provide a written report to the Commission, sworn
8 to under penalty of perjury, setting forth in detail the manner and form in
9 which they have complied and are complying with this Consent Decree.
10 This report shall include, but not be limited to:

11 i. For individual defendant Symons:

12 (1) Her then-current residence addresses, mailing addresses, and
13 telephone numbers; and

14 (2) Her then-current employment and business addresses and
15 telephone numbers; a description of the business activities of each
16 such employer or business, and the title and responsibilities of the
17 defendant for each such employer or business.

18 ii. For all defendants:

19 (1) a statement setting forth in detail the criteria and process through
20 which any of their websites register visitors online for any activity
21 requiring the submission of personal information, and a copy of
22 each different screen or page providing or collecting registration
23 information;

24 (2) a copy of each different privacy notice posted on any of their
25 websites;

26 (3) a statement setting forth in detail each place where the privacy

1 notice on any website is located and a copy of each screen or page
2 on which the website collects personal information;

3 (4) a copy of each different privacy notice sent to parents;

4 (5) a statement setting forth in detail when and how each notice to
5 parents is provided;

6 (6) a statement setting forth in detail the methods used to obtain
7 verifiable parental consent prior to any collection, use, and/or
8 disclosure of personal information from children;

9 (7) a statement setting forth in detail the means provided for parents to
10 review the personal information collected from their children and
11 to refuse to permit its further use or maintenance;

12 (8) a statement setting forth in detail why each type of information
13 collected from a child is reasonably necessary for the provision of
14 the particular related activity; and

15 (9) a statement setting forth in detail the procedures used to protect the
16 confidentiality, security, and integrity of personal information
17 collected from children.

18
19 c. For the purposes of this Consent Decree, the defendants shall, unless
20 otherwise directed by the Commission's representatives, mail all written
21 notifications to the Commission to:

22 Associate Director for Enforcement
23 Federal Trade Commission
24 600 Pennsylvania Avenue, NW
25 Washington, D.C. 20580

26 Re: *U.S. v. Industrious Kid, Inc.*, Civil Action No. 08-0639.

RECORD-KEEPING PROVISIONS

18. For a period of three (3) years from the date of entry of this Consent Decree, the defendants, and their successors and assigns, shall maintain, and make available to the Federal Trade Commission for inspection and copying within fourteen (14) days of the date of receipt of a written request, a print or electronic copy in HTML format of all documents demonstrating compliance with the terms and provisions of this Consent Decree, including, but not limited to, copies of acknowledgments of receipt of this Consent Decree; all reports submitted to the Commission pursuant to this Consent Decree; a sample copy of every different form, web page, or screen through which personal information is collected; and a sample copy of each different document containing any representation regarding the defendants' collection, use, and disclosure practices pertaining to personal information of a child. Each web page copy shall be accompanied by the URL of the web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting information on the Internet. *Provided*, however, that the defendants shall not be required to retain any document for longer than two (2) years after the document was created, or to retain a print or electronic copy of any amended web page or screen to the extent that the amendment does not affect the defendants' compliance obligations under this Consent Decree.

PROVISION OF TAXPAYER IDENTIFYING NUMBERS

19. Defendant, Industrious Kid, Inc., is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission its taxpayer identifying number, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of its relationship with the government.

CONTINUING JURISDICTION

20. This Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this

1 Consent Decree, for the enforcement of compliance therewith, or for the punishment of
2 violations thereof.

3 **JUDGMENT IS THEREFORE ENTERED** in favor of the plaintiff and against the
4 defendants, pursuant to all the terms and conditions recited above.

5 Dated this _____ day of _____, 2008.

6
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9
10 UNITED STATES DISTRICT JUDGE

11 The parties, by their counsel, hereby consent to the terms and conditions of the Consent
12 Decree as set forth above and consent to the entry thereof. The defendants waive any rights that
13 may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the investigation
14 and prosecution of this action.
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FOR THE UNITED STATES OF AMERICA:

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/s/

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FOR THE FEDERAL TRADE COMMISSION:

_____/s/_____
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FOR THE DEFENDANTS:

INDUSTRIOUS KID, INC.

_____/s/_____
JEANETTE SYMONS
President and Chief Executive Officer
Industrious Kid, Inc.
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_____/s/_____
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